



Comptroller General  
of the United States

Washington, D.C. 20548

Gordon  
1146085

## Decision

Matter of: GPSI-Tidewater, Inc.

File: B-247342

Date: May 6, 1992

Scott W. Woehr, Esq., and Anne B. Perry, Esq., Doyle & Bachman, for the protester.  
Dennis Mullins, Esq., Amy U. Brown, Esq., Manuel B. Oasin, Esq., and Robert U. McCall, Esq., General Services Administration, for the agency.  
Thomas E. Robinson for Seabat I Limited Partnership, an interested party.  
Daniel H. Gordon, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably rejected offeror's revised best and final offer ((BAFO)), which was submitted more than 22 months late, because nothing in an amendment (which called for an extension of the offer acceptance period) issued after BAFOs had been submitted necessitated reopening discussions and requesting submission of another round of best and final offers.

### DECISION

GPSI-Tidewater, Inc. protests the refusal of the General Services Administration ((GSA)) to consider a revised best and final offer ((BAFO)) that GPSI submitted 22 months after issuance of an amendment which called for an extension of the offer acceptance period under solicitation for offers ((SFO)) No. MVA-90047. GPSI contends that issuance of the amendment triggered a requirement that the agency reopen discussions and request a new round of BAFOs.

We deny the protest.

GSA issued the SFO on January 7, 1991, to solicit proposals for offices and related space to house the Naval Sea Combat Systems Engineering Station in Virginia. Initial offers were due March 29, 1991, and the SFO called for an offer acceptance period extending through October 31, 1991. Occupancy was required on December 31, 1992, 14 months thereafter. After various amendments were issued, BAFOs were requested to be submitted by September 27, 1991. GPSI and eight other offerors submitted BAFOs.

On October 2, 1991, recognizing that award by October 31 was unlikely, the agency issued amendment No. 8, which required that offers be extended through January 31, 1992, and informed offerors that occupancy would be required 14 months from the date of award. The amendment called for facsimile acknowledgment of receipt and stated: "If you do not concur with any provision of this amendment please so indicate in your response. Otherwise it shall be assumed that you are willing to comply with its provisions."

At that time, GPSI did not indicate any unwillingness to comply with the provisions of amendment No. 8. However, more than 2 months later, on December 11, 1991, GPSI submitted a revised BAFO that made two changes in its earlier BAFO. First, GPSI corrected an error that it had discovered in its proposal, which GPSI indicated in a cover letter to GSA had a significant impact on the price offered. Second, GPSI's cover letter mentioned that "the delay created by amendment 8 has allowed us to reduce our price further." The combined effect of these two changes was to reduce GPSI's proposed price approximately 5 percent.

GSA rejected GPSI's revised proposal as late, since it was submitted after the September 27, 1991, date for receipt of BAFOs. After an agency-level protest was denied, GPSI filed a protest with our Office. GPSI contends that, because amendment No. 8 materially changed the SFO, the agency was required to reopen discussions with offerors and to request a new round of BAFOs.

Amendment No. 8 made no substantive change to the SFO; rather, it simply adjusted the procurement schedule to take into account the delay which had occurred in source selection. Originally, offers were to be valid through October 31, 1991, which meant that award had to be made by that date, and occupancy was required by December 31, 1992, 14 months later. The shift from a firm occupancy date to an

unspecified date 14 months after award merely guaranteed offerors that, regardless of any delay in making award, the awardee would nonetheless continue to have the same period of time, 14 months, from the time of award until building occupancy. No material change was involved and, indeed, GPSI does not challenge this aspect of amendment No. 8.

Otherwise, the amendment merely required offerors to extend the validity of their proposals for an additional 90 days (through January 31, 1992). An offeror's extending the validity of its proposal constitutes an agreement to stand by the same prices, whenever award occurs during the period of validity. If GPSI was unwilling to extend the validity of its existing proposal, including prices submitted in the September 27, 1991, BAFO, it would have had to object promptly to the terms of amendment No. 8. If, as it appears, GPSI originally was willing to extend its September 27, 1991, prices through January 31, 1992, then it would defeat the purpose of an extension for GPSI to be free, during the course of the extension, to decide to revise its prices. Offerors are not permitted to agree to an acceptance period extension and then, weeks or months later, attempt to revise their prices. Automated Indus. and Assocs., Inc., B-225181.2, Dec. 3, 1986, 86-2 CPD ¶ 637.

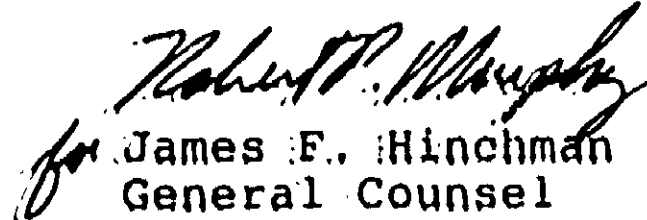
Moreover, a request for offerors to extend their proposal acceptance period does not constitute, or mandate, a reopening of discussions, nor does it give offerors the right to submit a revised BAFO. Reinhold Indus., B-236892.2, Jan. 30, 1991, 91-1 CPD ¶ 85. Accordingly, the agency clearly acted within the scope of its permissible

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While the record is not entirely clear in this regard, we assume for the purpose of this discussion that GPSI did, in fact, acknowledge amendment No. 8 and thereby agree to extend its offer before that offer expired on October 31, 1991. If GPSI did not do so, its offer expired and could not be revived, except in circumstances not present here. See Discount Machinery & Equip., Inc., B-244392, Oct. 15, 1991, 91-2 CPD ¶ 334. Accordingly, if GPSI failed to acknowledge the amendment in a timely fashion, it would not be eligible for award, so that it would not be an interested party for the purpose of protesting to our Office. 4 C.F.R. § 21.0(a) (1991).

discretion in deciding not to accept GPSI's December 11, 1991, revised BAFO.

The protest is denied.

  
for James E. Hinchman  
General Counsel

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We note that GPSI's revised BAFO apparently would not have affected the outcome of the competition. GPSI contends that the effect of the scheduling shift set forth in amendment No. 8 was to make it feasible for firms to reduce their prices. Yet, even including the correction of its mistake, GPSI's price reduction only totalled approximately 5 percent, while GPSI would have had to reduce its price by approximately 25 percent to be competitive with the lowest price offered. Thus, even if the agency had agreed to accept GPSI's December 11, 1991, offer, GPSI would have simply shifted from being sixth-placed to fifth-placed in the competition and would still clearly not be in line for award. This is particularly true since, if GPSI were allowed to reduce its prices, other offerors would also have to be permitted to reduce their prices as well. See Gemma Corp., B-218389.2, Aug. 30, 1985, 85-2 ORD ¶ 252. In short, the record demonstrates that GSA's rejection of GPSI's late revisions to its BAFO had no impact on the source selection.